

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3066 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MOONIR AHMED KHURSHID AHMED RANGREJ

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioner

MR HH PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Surat City, Surat passed an order on March 30, 1999 in exercise of powers under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act (for short PASA Act) detaining

Mahomad Nishar Rajabhai Shaikh of House No. 12/5, Aga-no-Vado, Surat, under the provisions of PASA Act. In the grounds of detention, the Detaining Authority took into consideration one prohibition case registered against the detenu in respect of foreign liquor and statements of two anonymous witnesses and recorded subjective satisfaction that the detenu is a bootlegger. The Detaining Authority also deemed it proper to exercise powers under Section 9(2) of the PASA Act and claimed privilege of not disclosing the identity of the two anonymous witnesses in public interest. The authority recorded a subjective satisfaction about the genuineness of fear expressed by the witnesses qua the detenu in respect of their person and property. The Detaining Authority after considering the possibility of resorting to less drastic alternative remedies came to the conclusion that the detention under PASA is the only remedy that can be resorted to in order to immediately prevent the detenu from continuing his illegal activities.

2. The petition is preferred by brother-in-law of the detenu. The petitioner challenges the detention on various counts.

3. Mr. Sanjanwala, learned advocate appearing for the petitioner has restricted his arguments to the facts that the Detaining Authority has verified the statements of the witnesses on 30-3-1999 itself when the authority passed the order of detention. He therefore submitted that there was no sufficient time lag to possibilise for the Detaining Authority to arrive at a genuine subjective satisfaction for the need for exercise of these powers. This has infringed the right of the detenu of making effective representation, and therefore the petition may be allowed.

4. Mr. H.H. Patel, learned AGP has opposed this petition. He submitted that the quickness on the part of the Detaining Authority may not be taken as non application of mind.

5. The Detaining Authority has exercised the powers under Section 9(2) of the PASA Act and thereby has claimed privilege of not disclosing the identity of the witnesses. These powers are exercised by recording a subjective satisfaction that the statements made by these witnesses and the fear expressed by them qua the petitioner is found to be correct.

While exercising the powers under Section 9(2) of

the PASA Act, the Detaining Authority has also to keep in mind that exercise of powers under Section 9(2) of the PASA Act would deprive the detenu of his right of making an effective representation. He has therefore to consider as to what is to be given preference. Public interest and then exercise of powers under Section 9(2) of the PASA Act and the right of the detenu in exercise of powers under Section 9(2). Each case has to be judged on its own merits and the Detaining Authority has to strike a balance between the interest of the detenu on one hand and the public interest on the other.

For recording satisfaction the authority has to consider the truthfulness and genuineness of the fear expressed by the witnesses. The authority has also to take into consideration the material placed before it for exercising the powers both under Section 9(2) as well under Section 3(1) of the PASA Act. This entire exercise would require time. As it is seen in the instant case, the whole exercise was undertaken at one go in a single day, i.e. 30-3-1999.

6. In view of the decision in the case of Kalidas C. Kahar v. State of Gujarat 1993(2) GLR 1659, there was no time lag between the verification of the statements and the orders passed which could have possibilised for the Detaining Authority to undertake this exercise.

8. The petition is therefore deserves to be allowed and same is hereby allowed. The detenu Mahomad Nishar Rajabhai Shaikh of Saiyadpura, House No. 12/5, Aga-no-vad, Surat be set at liberty forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)